IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

OP.No. 7453 of 2000(K)

PETITIONER:

WEST COAST INDUSTRIAL GASES LIMITED.,
REGD. OFFICE & FACTORY,
XXXIV/6128, M.G.ROAD,
PERUMANOOR, SHIPYARD PREMISES,
ERNAKULAM, KOCHI – 15,
REPRESENTED BY ITS GENERAL MANAGER.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:
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1. **THE REGIONAL LABOUR COMMISSIONER AND THE APPELLATE AUTHORITY UNDER THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS)ACT, 1946, ERNAKULAM.**

2. **THE DEPUTY LABOUR COMMISSIONER & CERTIFYING OFFICER UNDER THE INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946, ERNAKULAM.**

3. **THE PRESIDENT,**
   INDUSTRIAL GASES EMPLOYEES ASSOCIATION,
   ERNAKULAM, COCHIN – 15.

4. **THE PRESIDENT,**
   KERALA INDUSTRIAL GASES EMPLOYEES UNION,
   COCHIN – 15.

BY ADV. SRI.K.BALAKRISHNAN
SRI.K.A.ABRAHAM
SRI.S.S.NAIR
R1&R2 BY GOVERNMENT PLEADER SRI. P.N. SANTHOSH

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.12419/2000 IN O.P.NO.7453/2000 K

DISMISSED

23/10/2007 **SD/- THOTTATHIL B.RADHAKRISHNAN,**
J U D G E.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE APPLICATION DTD. 20/04/1996 FILED BY THIRD RESPONDENT UNDER SECTION 10(2) OF THE ACT, BEFORE THE SECOND RESPONDENT.**

EXT.P2: **COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER BEFORE THE SECOND RESPONDENT DTD. 8/07/1996.**

EXT.P3: **COPY OF THE ORDER PASSED BY THE DEPUTY LABOUR COMMISSIONER, ERNAKULAM DTD. 15/07/1997.**

EXT.P4: **COPY OF THE APPLICATION IN S.O.A.NO.1/98 FILED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DTD. 15/10/1998.**

EXT.P5: **COPY OF THE COUNTER STATEMENT FILED BY THE THIRD RESPONDENT IN S.O.A.NO.1/98 BEFORE THE 1ST RESPONDENT.**

EXT.P6: **COPY OF THE ORDER DTD. 28/12/99 PASSED BY THE FIRST RESPONDENT IN S.O.A.NO.1/98.**

/TRUE COPY/

P.S. TO JUDGE

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.7453 of 2000-K

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Dated this the 23rd day of October, 2007.

JUDGMENT

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1. The writ petitioner is an establishment, which is also a factory to which Industrial Employment (Standing Orders), Act, 1946, hereinafter referred to as the "Act", applies. Its Certified Standing Orders, among other things, provide the management, the authority to place workmen under suspension from duty, pending enquiry, investigation or trial and also in relation to disciplinary proceedings.

2. At the instance of the trade unions, Ext.P3 has been issued by the Certifying Officer incorporating two more clauses in the Certified Standing Orders as 26(f) and 26(g) which read as follows:

> "26(f). Provided that where the period between the date on which the workman was

suspended from duty pending the enquiry or investigation or trial and the date on which an order of suspension was passed under this clause exceeds four days, the workman shall be deemed to have been suspended only for four days or for such shorter period as is specified in the said order of suspension and for the remaining period he shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period.

26(g). Provided also that where an order imposing fine or stoppage of annual increment or reduction in rank is passed under this clause, the workman shall be deemed to have been on duty during the period of suspension and shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period."

3. The said decision of the Certifying Officer was appealed against. That has been dismissed as per Ext.P6 order on the ground that the modification to the Certified Standing Orders in terms of Ext.P3 would be in consonance with the terms of the Model Standing Orders and therefore, the order of the Certifying Officer is not liable to be revoked.

4.The power to suspend an employee, to wit, a workman or otherwise, in connection with the disciplinary proceedings, which is going on or is proposed, inheres in every employer. It emerges out of the fundamental jural and managerial relationship between the employee and the employer. The power to place an employee under suspension during the enquiry or investigation or trial in relation to criminal charges is also available to the employers as a measure to ensure that the conduct of the employees, including workmen, cannot, in any manner, affect the establishment. Such placement on suspension may also be necessary, on the facts and in the circumstances, in a given case, if their continued dealing with office is likely to impair the investigation or trial.

5.Once the employee is placed under suspension, the question as to how the period of suspension has to be treated, would depend upon the final outcome of the proceedings in relation to which

he has been placed under suspension. The entitlement of a person under suspension is to subsistence allowance in terms of the statutory provisions that would govern the parties. Barring that, no employer could be compelled to treat the period of suspension of all employees in a particular fashion or manner laid down specifically in provisions like those which are certified as per the impugned decisions. If the Standing Orders of the establishment are modified to the extent certified, it would compel the management to be in a situation where it can continue a person under suspension for four days only, unless it pays the entire wages during the period of suspension thereafter. This is clearly impermissible. This is not contemplated by the Constitution and the Laws.

6. Reverting to Kerala Industrial Employment (Standing Orders) Rules, 1958, hereinafter referred to as the "Rules", it can be seen that Schedule I provides Model Standing Orders which,

among other things, provide Clause 17 which governs the disciplinary action for misconduct. Clause 17(2) of the Model provides imposition of suspension for a period not exceeding four days at a time or the penalty of dismissal without notice or compensation in lieu of notice, if the worker is found guilty of misconduct. The suspension that could be imposed in terms of Clause 17(2) of the Model is suspension by way of punishment. This is so because, suspension on account of disciplinary proceedings being contemplated against the workman or where criminal proceedings are against him, is an imposition to be made in terms of Clause 4(a), which suspension is not a punishment and such an order of suspension falling under Clause 4(a) would stand governed by provisions in Clause 4 (b), which provides for the application of the provisions of the Kerala Payment of Subsistence Allowance Act, 1972 to a workman, who is placed under suspension under sub-clause (a) of Clause 4. There is no doubt that after conclusion of

the disciplinary proceedings or the criminal proceedings, it should be open to the management to take a decision, as an employer, as to how it views the conduct of its employee. In the backdrop of the available materials and in consonance with the labour laws, it may be a case where the workman, who was facing criminal charges, would come out with an order of acquittal gaining the benefit of doubt or being acquitted by the criminal court free of all blemish. These situations will vary from case to case. If an employer is to be compelled through the Certified Standing Orders as to how he would deal with an employee, who had been under suspension during criminal proceedings or during disciplinary proceedings which would have ultimately failed on a technical issue or would have ended up in the imposition of a punishment which is lesser than what could have been contemplated at the stage of initiation, the whole system of discipline in the establishment could be easily stultified. The employer and the

management are not mere scarecrows of an establishment. The management, the workmen and the other employees of the establishment are its vibrant components. The freedom of the management in the process of controlling the establishment would be totally curtailed, if the Standing Orders are amended, as has been done, as per the impugned decisions.

7. For the foregoing reasons, the petitioner is right in contending that the amendments certified and incorporated to the Standing Orders as per the impugned decisions are irregular, arbitrary, unconstitutional and do not stand the test of law. They are liable to be set aside.

In the result, this writ petition is allowed quashing Exts.P3 and P6. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.7453 of 2000-K

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JUDGMENT

Dated: 23rd October, 2007.